

Editor's note: Reconsideration denied by Order dated March 28, 1984

HARRIET C. SHAFTEL

IBLA 84-108

Decided February 29, 1984

Appeal from decision of the Alaska State Office, Bureau of Land Management, dismissing protest against termination of oil and gas lease AA 48019.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals --
Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

Sec. 401(d) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C.A. § 188(d) (West Supp. 1983), affords an additional opportunity to reinstate a lease terminated by operation of law where the rental was not tendered within 20 days of termination, if certain additional conditions are met. Where a lease terminates on or after enactment of sec. 401 (Jan. 12, 1983), the lessee must file a petition for reinstatement together with required back rental and royalty accruing from the date of termination, on or before 60 days from receipt of notice of termination or 15 months after termination, whichever is earlier.

3. Administrative Authority: Generally -- Estoppel -- Federal Employees
and Officers: Authority to Bind Government

Reliance upon erroneous or incomplete information provided by Federal employees does not create any rights not authorized by law.

4. Notice: Generally -- Regulations: Generally -- Statutes
All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: William G. Azar, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Harriet C. Shaftel has appealed from a September 23, 1983, decision of the Alaska State Office, Bureau of Land Management (BLM), which dismissed her protest against the termination of her oil and gas lease AA 48019. In so finding BLM stated that its notice of termination set forth the requirements for reinstatement, and that appellant did not meet them. BLM also found that information allegedly given to appellant by a BLM employee could not bind the Government or create rights that did not exist.

Appellant's lease was issued effective May 1, 1982. The annual rental was due on or before May 1, 1983, the anniversary date of the lease. Appellant submitted her rental on May 31, 1983, 30 days after it was due.

BLM's termination notice stated:

You have the right to petition for reinstatement of the lease, pursuant to 30 U.S.C. 188(c), Class I reinstatements, and 30 U.S.C. 188(d) and (e), Class II reinstatements. The conditions to be met for a Class I or Class II reinstatement are outlined below.

I. Class I (30 U.S.C. 188(c); 43 CFR 3108.2-1(c))

Your lease may be reinstated under these provisions only if: (1) the rental due is paid or tendered to this office within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence, (2) that a petition for reinstatement, together with the required rental, is filed in this office within 15 days after receipt of this Notice, and (3) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease. If these conditions are met, your lease will be reinstated with the original lease terms and conditions, effective on the date of the termination. If one or more of the conditions are not met, your lease may be eligible for a Class II reinstatement. However, to qualify for a Class II reinstatement, the following conditions must be met.

II. Class II (30 U.S.C. 188(d) and (e); P.L. 97-451, Sec. 401(d))

Your lease may be reinstated under these provisions only if: (1)(a) the rental is paid within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay on the anniversary date was due to inadvertence, or, (b) if the rental is not paid within 20 days after the anniversary date, it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence or due to inadvertence, (2) that a petition for reinstatement, together with the rental and royalty due from the date of termination to the date of petition and payable at the rates set out below, is filed in this office within 60 days after receipt of this Notice, and (3) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease.

If these conditions are met, you will have to meet certain other requirements for reinstatement as follows: * * *

In its decision BLM found that appellant did not submit her rent within 20 days, as required by 30 U.S.C. § 188(c); and that she did not submit a petition for reinstatement within the 60-day time frame of P.L. 97-451.

On appeal appellant asks that the "proposed termination" of her lease be reconsidered. She does not dispute the findings of BLM that she did not meet the requirements for reinstatement. Instead, she argues that she reasonably relied upon information given to her by BLM employees to the effect that she had a 30-day grace period in which to pay the rental and that the doctrine of equitable estoppel applies. In this connection she suggests the possibility of a hearing.

[1] We cannot "reconsider" the termination of the lease, as appellant requests. Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1976), provides that upon failure of a lessee to pay rental on or before the anniversary date of the lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. 1/ We accordingly find that appellant's lease terminated by operation of law for nonpayment of rental. Under 30 U.S.C. § 188(c) (1976), a terminated oil and gas lease may be reinstated where the rental is paid within 20 days and upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. Vernon L. Berg, 72 IBLA 211 (1983); Tenneco Oil Co., 71 IBLA 339 (1983); Phillips Petroleum Co., 71 IBLA 105 (1983). In the absence of such proof, a petition for reinstatement is properly denied. As the rental was not paid within the required 20 days, the lease may not be reinstated pursuant to 30 U.S.C. § 188(c) (1976). Trend Resources Limited, 64 IBLA 383 (1982); Sun Oil Co., 63 IBLA 26 (1982).

1/ 43 CFR 3108.2-1, the implementing regulation, was amended effective Aug. 22, 1983, after the events in this case occurred. The deadlines pertinent to this case, however, were not changed. See 48 FR 33673-74 (July 22, 1983).

[2] Section 401 of the Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, signed January 12, 1983, amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law. Section 401 added the following subsection (d)(2) to 30 U.S.C. § 188 (1976).

(2) No lease shall be reinstated under paragraph (1) of this subsection unless --

(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of -

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease.

Because appellant's lease terminated after enactment of this amendment, and BLM sent her a notice of termination, she would have had to submit a petition for reinstatement within 60 days of receipt of such notice, in order to avail herself of the reinstatement option of this provision. ^{2/} As there is no evidence that a petition for reinstatement was filed within the required 60 days of the notice, appellant cannot qualify for reinstatement under section 401 of the Federal Oil and Gas Royalty Management Act, *supra*. See Larry Chambers, 77 IBLA 214 (1983). We turn to appellant's argument of equitable estoppel.

[3, 4] In her protest letter dated September 14, 1983, appellant stated:

^{2/} BLM has proposed regulations to implement these new statutory provisions. 49 FR 4217 (Feb. 3, 1984).

During the month of April 1983, I received a notice that my oil and gas lease rental payment was due on May 1, 1983. As the deadline approached, my husband and I determined that we needed more information before deciding whether or not to continue with the lease. I called the BLM information office and was told by the person in that office that my payment would be accepted for up to 30 days after the due date. After the due date passed, I called again to verify this information and was again told that I had a 30-day "grace-period" in which to make my payment. Also, I was not informed of any penalty for late payment. I therefore continued to gather information, and on May 31 went to the BLM office in person and paid the rent. At that time, I discussed with the cashier the fact that I was just ahead of the deadline, which she concurred with, and my check was accepted and a receipt was given. I had therefore spoken with a minimum of three people (one or more of whom had no doubt checked with a supervisor), all of whom communicated to me that a payment received within 30 days of the due date was a good payment, with no penalty.

Although appellant may have been misled by misstatements of BLM employees as to the statutory deadline for rental payment, her claim of estoppel against the Government is without merit. One of the essential elements of estoppel is that the party asserting it must be ignorant of the material facts. In this case, appellant claims the facts about which she was misled were the applicable statutory and regulatory deadlines. However, it is an established rule of law that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). This presumption precludes appellant's argument that estoppel must lie, because she cannot claim ignorance of the facts, *i.e.*, the statutory deadline, set out also in 43 CFR 3108.2-1(a). John Murphy, 58 IBLA 75, 80-81 (1981). In addition, reliance on erroneous or incomplete information provided by BLM employees cannot relieve a person of an obligation imposed by statute, or create rights not authorized by law, nor can it relieve a person of consequences imposed by statute for failure to comply with statutory requirements. Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972); Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970); Lynn Keith, 53 IBLA 192, 198, 88 I.D. 369, 373 (1981). In the absence of a showing of affirmative misconduct by a responsible Federal employee, estoppel will not lie against the Government because of reliance on erroneous or inadequate information. United States v. Ruby, 588 F.2d 697 (9th Cir. 1978); Lynn Keith, *supra*.

Appellant has suggested that a hearing might be useful to expand upon the facts of this case. However, for the Board of Land Appeals to grant a hearing, pursuant to 43 CFR 4.415, the appellant must allege facts which, if proved, would entitle her to the relief sought. Cheyenne Resources, Inc., 46 IBLA 277, 87 I.D. 110 (1980). Appellant here has not alleged facts which, if proved, would compel a different legal conclusion. Therefore, no hearing will be ordered.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

